

Citizen Charter Review Committee

December 10, 2009

11:30 a.m.-1:30 p.m.

Leon County Courthouse

Commission Chambers, 5th floor

- I. Call to Order
- II. Invocation and Pledge
- III. Roll Call
- IV. Approval of Minutes of Previous Meeting
 - 1. November 19, 2009 Meeting Minutes
- V. Reports of Chairperson
- VI. Presentations by Invited Guests/Consultant
 - 1. Presentation by Constitutional Officers
 - a. Clerk of Court Bob Inzer
 - b. Tax Collector Doris Maloy
- VII. Remarks of Interested Citizens
- VIII. Unfinished Business
 - 1. Analysis of the Citizen Charter Review Committee's Legal Scope of Board and County Commissioners Charter Issues
- IX. New Business
 - 1. Charter Issues
 - a. Tourist Development Council Structure
 - b. Non-Partisan Elections
 - c. Annexation Policy
 - 2. Staff/Consultant Discussion (Pertinent Updates)
 - 3. Member Discussion (Direction to Staff/Consultant)
- X. Adjournment with Day Fixed for Next Meeting

*The next meeting of the Citizen Charter Review Committee is scheduled for Thursday,
December 17, 2009*

I.

CALL TO ORDER

II.

INVOCATION AND PLEDGE

III.

ROLL CALL

IV.

APPROVAL OF MINUTES OF PREVIOUS MEEINTG

**Leon County
2009-2010 Citizens Charter
Review Committee (CRC)
November 19, 2009**

The Leon County 2009-2010 Citizens Charter Review Committee (CRC) met on November 19 in the Commission Chambers with Committee members Christopher Holley (Chair), Marilyn Wills, Linda Nichol森, David Jacobson, Lester Abberger, Tom Napier, Catherine Jones, Lance DeHaven-Smith, Rick Bateman, Donna Harper, and Jon Ausman in attendance. Members absent were: Ralph Mason, Sue Dick, Larry Simmons, and Chuck Hobbs. Also attending were County Administrator Parwez Alam, County Attorney Herb Thiele, Senior Assistant County Attorney Patrick Kinni; Facilitator Kurt Spitzer, Special Projects Coordinator Shington Lamy, and Recording Clerk Dionte Gavin.

I. **Call to Order:**

Chairman Holley Called the Meeting to Order at 11:37 a.m.

II. **Roll Call:**

The Roll Call was conducted by Shington Lamy

III. **Invocation and Pledge:**

The Invocation was provided by Chris Holley who then led the Pledge of Allegiance.

IV. **Approval of the Minutes:**

Lance DeHaven-Smith moved for the approval of the November 12, 2009 minutes and it was seconded by Rick Bateman. The minutes were unanimously approved.

V. **Reports of Chairperson:**

- Reiterated his desire to open the meetings up for public input prior to summarizing and voting on issues to be presented to the Board.
- In response to suggestions he has received he will: 1) reach out to the local paper to indicate willingness for the process to be "open and transparent" and 2) welcome the Council of Neighborhood Associations (CONA) input into the process.

VI. **Presentations by Invited Guests/Consultant**

Commissioner Bob Rackleff commented on the importance for County government to understand the realities of the current economy and its role especially on the issue of increasing energy costs and how this can be managed. He also indicated support for partisan elections.

VII. **Remarks of Interested Citizens:**

None

VIII. **Unfinished Business:**

1. **Review of Bylaws and Comparisons**

Kurt Spitzer shared that a copy of the revised draft by-laws were provided and explained the revisions that had been made. He also noted that a summary of the process used by other charter counties to "move" issues were also provided. He further explained the process used by other Charter Counties and offered the options available to the Charter Review Committee (CRC).

After discussion the following additional changes and clarifications were made to the draft by-laws:

- Rule 19 Amendment was altered to require that changes to the by-laws would necessitate a two-thirds vote of the **entire Committee.**
- Rule 10 b. Decision Agenda was changed to reflect that the Committee could request, by a **majority of members present**, staff to prepare proposed amendments for review and discussion at public hearings.
- Donna Harper remarked on Rule 12 Official Rules of Order and suggested that “matters of procedural conflict” be deleted. **The suggestion was discussed and agreed to by the Committee.**
- Tom Napier established that Rule 8 Attendance intends that notification of an absence be made to Shington Lamy either by phone, e-mail or announcement at a prior meeting.
- Jon Ausman referenced Rule 5 Agenda for Regular Meetings and recalled that Ms. Harper had raised the issue that meeting agendas be approved at each meeting. He inquired if this recommendation could be considered.
Jon Ausman moved, duly seconded by Donna Harper to insert an “Approval of Agenda” to the meeting agenda for approval by the Committee at each meeting. The motion failed 2-9 (Chris Holley, Marilyn Wills, Linda NicholSEN, David Jacobson, Lester Abberger, Catherine Jones, Tom Napier, Lance DeHaven-Smith, and Rick Bateman in opposition)
- Mr. Ausman voiced favor for the CRC to be enabled to put forward a “majority report” to the Board; these would be issues that would allow a secondary set of recommendation to be presented to the Board for consideration with only a majority of the CRC in support.

Mr. Spitzer advised that a vote of 10 by the CRC would place an issue before the Board for consideration; however would require a 4+1 vote by the County Commission to place the amendment on the ballot. Mr. Spitzer confirmed that an individual citizen can always bring an issue to a Commissioner to bring forward to the County Commission for consideration.

There was continued discussion with some concern expressed on there being too many issues before the CRC and the limited time to adequately address them. Concern was also noted about the volume of recommendations to be presented to the Board.

Jon Ausman moved, duly seconded by Donna Harper, to ask Mr. Spitzer to bring back a proposal that would allow the majority of the members of the CRC to also present recommendations to the full County Commission for their consideration. The motion failed 4-7 (Chris Holley, Marilyn Wills, Linda NicholSEN, Catherine Jones, Tom Napier, Lance DeHaven-Smith, and Rick Bateman in opposition)

- Rule 12 Official Rules of Order Ms. Harper recapped her previous suggestion regarding the CRC’s use of procedures that pertain to small boards as opposed to Roberts Rules of Order in general. She provided examples of the differences in procedures and spoke in favor of implementation of the suggestion. **No action was taken by the Committee on this issue.**

A motion to approve the by-laws as amended was made by Tom Napier and duly seconded by Rick Bateman. The motion carried 11-0.

Chairman Holley requested that a copy of the approved by-laws be distributed to the Committee.

2. Board Identified Charter Issues

Mr. Lamy shared that the Board held a workshop on May 26 and identified policy issues that it wished to be considered by the CRC. He noted that the Board stressed that these should not be considered exhaustive or limit the committee's ability to address broad or specific issues. This list was included in the Committee's packet. Mr. Lamy added that a consolidated list of issues would be available at the next meeting which would incorporate these topics together with those issues commented on by Commissioners; along with a broader analysis of which issues can be addressed by the CRC.

Chairman Holley acknowledged the need for the Committee to receive public input and a tentative date of January 7 was set. He confirmed that there were no issues that individual Committee members would bring forward for the CRC review thus, the list the CRC will work from will consist of issues from the Board and the public.

Chairman Holley pointed out that the Constitutional Officers are scheduled to appear before the CRC at the next two meetings and acknowledged the need to move forward with discussion on some of the issues before the CRC. Acting on this suggestion the Committee settled on the following schedule:

December 10, 2009: Constitutional presentations; Tourist Development Council structure; non-partisan elections, and annexation policy;

December 17, 2009: Constitutional presentations; lower charter petition thresholds, and consolidation

3. Counties' Charter Comparison (Volusia County Charter)

Mr. Spitzer provided a brief overview and comparison of other Charter Counties, including an in-depth review of Volusia County's Home Rule Charter. A copy of the Charter was provided to the Committee.

IX. New Business:

1. Requested Information from County Attorney

County Attorney Thiele provided an overview of the current Federal Court Order related to the suit filed by the NAACP regarding the County's districting structure and explained that the County Commission or the Charter could not change the methodology of the current elections without Federal Court approval. He added that the plaintiff's agreement or disagreement to the change would significantly impact the Courts decision. He commented that current census data would be needed to demonstrate the County's ability to maintain the minority district and was concerned that this would not be available at this time. He stated that he would hold discussions with the NAACP should the CRC decide that it would recommend a change to the five district, two at-large methodology currently utilized.

Mr. Bateman pointed out that the intent of the Consent Decree was to establish a minority district and he was not sure there would be opposition as long as the minority district is maintained.

Mr. Ausman commented that he did not want discussions limited to a 5-2 or 4-3 Board composition.

Ms. Harper mentioned that an increase of districts would make more accessible and create a greater opportunity for residents of lesser income to be elected.

Mr. Ausman remarked that he was concerned regarding the reflection of votes on motions and asked that the record indicate the actual vote. Mr. Thiele confirmed that the record would reflect the vote and would show those individuals voting in opposition.

X. Adjournment with Day Fixed for Next Meeting:

Date of next meeting December 10, 2009 at 11:30 a.m. in Commission Chambers.

There being no further business, Tom Napier moved to adjourn the meeting at 1:32 p.m. The motion carried unanimously.

Christopher Holley, Chair

Bob Inzer, Clerk of Court

V.

REPORTS OF CHAIRPERSON

VI.

PRESENTATIONS BY INVITED GUESTS/CONSULTANT

- a. Clerk of Courts Bob Inzer**
- b. Tax Collector Doris Maloy**



MEMORANDUM

TO: Leon County Charter Review Committee
FROM: Kurt Spitzer
DATE: December 8, 2009
RE: Constitutional Officers

The Leon County Constitutional Officers are scheduled to provide presentations to the Charter Review Committee during its December 10th and December 17th meetings. The scheduled presentations are as follows:

December 10:

Bob Inzer, Clerk of Courts
Doris Maloy, Tax Collectors

December 17:

Larry Campbell, Sheriff
Ion Sancho, Supervisor of Elections
Bert Hartsfield, Property Appraiser

I have also attached a briefing document on the role and function of constitutional officers that I prepared for the Tallahassee-Leon County Consolidation Study Commission several years ago. All of the budget information is out of date but I believe that most of the substantive discussion is still current. It's provided to you just as background information.

**Briefing Document
On the
County Constitutional Officers**

**Prepared for the
Tallahassee-Leon County Consolidation Study Commission
Kurt Spitzer and Associates**

1991

CONSTITUTIONAL OFFICERS

HISTORY

There are over 3,100 county governments in the country. Every state in the nation that has county governments (Rhode Island and Connecticut do not) provides for a structure where certain administrative responsibilities are shared between separately elected offices and the county governing board.

These "row" offices are relatively autonomous and operate independently of many actions of the governing body. Such offices are most common in counties with commission and commission-administrator forms of government, and are less common in charter counties or counties with other forms of government. Row offices whose power is derived from specific constitutional authorization are generally more independent of the governing body than offices that are created by statute.⁰

The most commonly elected offices are those of Sheriff, Treasurer, Clerk to the Board and Court Clerk. Less common are the elected positions of Register of Deeds, Surveyor and Engineer. There are, however, many different practices from state to state, including provisions for electing county attorneys, drainage commissioners, coroners and jail commissioners.

Attempting to draw comparisons between the Constitutional Officers in Florida and the practice in other states is difficult for two reasons. First, nomenclature and terminologies vary from state to state and a "clerk" in Florida may not have the same functions as a "clerk" in Ohio - the duties of the office in Florida may be spread among two or more positions in other states.

⁰ Blake R. Jeffery, Tanis J. Salant and Alan L. Boroshok, County Government Structure, A State by State Report (Washington, D.C.: National Association of Counties, 1989), pp.15-19.

Secondly, the relationship between the governing body and the row officer(s) differs from state to state. For example, Florida statutes insure a great deal of autonomy for most of its Constitutional Officers by providing for a budget process over which the Commission does not have final control. Even if a row office in another state can be classified as having identical duties as one in Florida, there may not be the same budgetary relationship between it and the governing body as is in Florida counties.

Nonetheless, with the above-mentioned caveats in mind, a brief description of the practice in other states can be useful.

Where the Florida offices can be relatively easily identified as having counterparts with similar duties in other states, the most common position is that of Sheriff, with 42 states providing for that office. Twenty-three states provide for an elected assessor and only eight for an elected tax collector. (The function of collecting property taxes, if delegated to an elected official, is commonly vested with the Assessor or the Treasurer.)

The practice of electing a specific county official to conduct elections is even less common than electing tax collectors. Most often, Treasurers or Clerks often have responsibilities for conducting elections in other states. Florida may be the only state that provides for a separately elected official at the county level whose primary duties are to administer elections and provide related functions such as voter registration.⁰

The duties of Florida's Clerk of the Court are most commonly split among the positions of Treasurer, Clerk to the Board, Auditor, Recorder, Register of Deeds or Court Clerk.

⁰Telephone conversation with Ms. Carol Garner, Director, The Elections Center, Alexandria, VA. May 16, 1991.

In Florida, there are five constitutionally-mandated county offices: Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections and Clerk of the Circuit Court. The Clerk of the Circuit Court also functions as ex officio clerk to the Board of County Commissioners, recorder, auditor and custodian of all county funds.

Florida did not always provide for the election of the above-mentioned officials nor were those offices identified in the Constitution. The Constitution of 1868, for example, provided that the Governor appointed the Assessor, Collector of Revenue, Treasurer, Surveyor, Sheriff and Superintendent of Schools. The Clerk of the Circuit Court was also appointed by the Governor and served as Clerk of the County Court, Recorder and Auditor. The Governor also appointed five County Commissioners in each county.

DUTIES and AUTHORITY⁰

The Sheriff

In Florida, the Sheriff serves as the chief law enforcement officer in the county. The office also functions as the "Chief Executive Officer" of the judicial system in the county and in that role, is responsible for providing certain services to the judicial branch such as service of civil process and bailiffs. In most counties the Sheriff also operates the jail⁰. The Sheriff's budget is the largest of the Constitutional Officers and is typically the largest of any single county department.

A unique statutorily-authorized process allows the Sheriff to appeal the budget adopted by the County Commission to the Governor and Cabinet, sitting as the Administration Commission. The Administration Commission is authorized to amend the Sheriff's budget and increase the funding allocated to the Sheriff's office beyond that set by the County Commission.

⁰Please see the "Constitutional Office Reports" for a description of the duties, functions, sources of authority and budget summary that was provided by the Leon County Constitutional Officers to the Study Commission earlier this year.

⁰In 11 counties the jail is operated either by a private corporation under contract with the County Commission or by a department under the managerial control of the County Administrator.

In Leon County, the Sheriff's budget totals almost \$16.5 million, with over \$15.5 million appropriated by the County Commission. It is the largest single appropriation made by the County. (At \$11.2 million, Public Works is the only other departmental expenditure that comes close to that for the Sheriff.)

The Property Appraiser

The Property Appraiser's office is responsible for assessing the value of real and personal property, and for providing related functions such as producing a tax role and administering various exemptions.

Funding for the Appraiser's office is determined by a statutorily prescribed mechanism that provides that the cost of operating the office is allocated among the county and other taxing entities based upon each taxing entities' (excluding municipalities and school districts) percentage share of the total ad valorem taxes levied in the county.

The budget process for the Appraiser also contains an appellate mechanism, although it operates somewhat differently from that of the Sheriff. Each Appraiser submits his or her budget simultaneously to the Division of Ad Valorem Tax of the Department of Revenue and to the County Commission. After review, the Division the notifies the Commission and the Appraiser of a tentative budget. The final budget is approved by the Department of Revenue. The Commission or the Appraiser then has the option of appealing the decision of the Department to the Administration Commission.

Any surplus funds remaining in the Appraiser's office at the end of the fiscal year are returned to the taxing entities in the county in the same proportion as they were derived.

Funding by the Leon County Commission for the Property Appraiser's Office was \$1,452,976 in FY 1990-91.

The Tax Collector

The office of Tax Collector is responsible for collecting all ad valorem taxes, county occupational license taxes and a variety of state licenses and registration fees.

In Leon County (as most counties) the Collector is a "fee" officer as opposed to a "budget" officer. That is, the office is funded through various statutorily-established fees and charges that are retained by the office when collecting licenses, automobile tags, ad valorem taxes, etc.

The process for determining each taxing entities' proportionate cost of operation of the Collector's office is somewhat different than that of the Appraiser. The cost of operating the office for property taxes and special assessments is billed monthly to all taxing entities in the county. A partial exception is made for school districts' proportionate share for ad valorem taxes and that cost is borne by the County Commission. Any surplus funds remaining in the Collector's office at the end of the year are returned to the Board of County Commissioners.

The budget approval process is also somewhat different from that of the Appraiser. The Collector's budget is submitted directly to the Department of Revenue (at the department level) for review and approval, with no opportunity for appeal by the Commission to the Administration Commission.⁰

⁰A further explanation of the budget process for the Collector and Appraiser is in order. The process for both offices is contained in Section 195.087, Florida Statutes. That section specifically acknowledges, however, that county charters may provide for alternative budget adoption procedures for the office of Tax Collector. Similar recognition is not made for the office of Property Appraiser. The Department of Revenue administers the budget process without variance in charter counties, even in those situations where the constitutional status of an elected appraiser has been abolished by provisions of a charter.

Funding for the office of the Tax Collector by the County Commission was \$1,283,000 in FY 1990-91.

The Supervisor of Elections

The Supervisor of Elections is charged with administering elections and providing related services, such as voter registration. Additionally, the City of Tallahassee contracts with the Supervisor of Elections to conduct municipal elections.

The budget process for the Supervisor's office is very similar that of departments that are under the direct control of the Commission. There is no appellate mechanism available to the Office of the Supervisor nor does it operate as a "fee" office.

Appropriations were \$485,095 in FY 1990-91, which is a year when there are not any scheduled municipal elections.

Clerk of the Circuit Court

The Clerk's Office provides several services and functions to the Judiciary and local governments. The office serves as Clerk of the County and Circuit Courts and is an officer of the judicial branch. The office is responsible for all record keeping and clerical functions of the Courts. Among other things, this includes keeping all records and papers filed with the Court; keeping trial calendars, dockets and judgement books; and, providing various reports on Court activities to the Chief Judge, Supreme Court and various other agencies.

As Clerk of the Board of County Commissioners, the Clerk is the keeper of all minutes of meetings of the Commission and various other bodies, either by statutory mandate or interlocal agreement.

As Accountant, the Clerk also has responsibilities as comptroller and treasurer of the county, such as revenue collection and disbursement, maintaining financial records and reports, investing county funds, etc. In most small counties, the Clerk is also budget officer, although that function can be assigned to the County Administrator's office by ordinance (as has been the case in Leon County.)

As Auditor, the Clerk is required to insure that sound accounting principals are being followed, and that there is adequate internal control of the County's finances and that expenditures are being made in accordance with County budgetary policies and state law.

Clerk's offices in Florida are about evenly split between functioning either as a "budget officer" or a "fee officer." If operating as a fee office, all revenue designated to offset the operation of the Clerk's office relating to the Circuit Court is retained by the Clerk and any surplus is remitted to the County Commission at the end of the year.

If operating as a budget office, the revenue generated from various fees is deposited into the County general fund, budgeted and transferred to the Clerk's operation throughout the year.

In all cases, the Office of the Clerk operates as a budget officer for functions relating to his or her roles as Clerk to the County Commission and as Clerk of the County Court.

In Leon County, the Clerk is a fee officer. The Commission budgeted \$2,194,095 to the office in FY 1990-91.

MUNICIPAL CHARTER OFFICERS

Much greater flexibility regarding organizational structure and duties of senior officers is granted to municipal governments as opposed to non-charter counties. Basic county structure has a history that dates back hundreds of years, is embedded in Florida statute and inextricably tied to questions of "turf," and requires passage of a special act or charter - both of which must be approved by the electorate - before the local community can change the system.

Municipal charters, on the other hand, are only required to clearly define responsibility for administrative and legislative functions, and that the legislative branch be elective.

The structure of city governments in Florida and the nation have been heavily influenced by the movement for reform in local government which began some 75 years ago and called for a structure where the responsibility for policy-making was vested in a legislative body (the council) and responsibility for implementing policy was vested in professional management. In cities of over 10,000 people, the council-manager form is the most widely used structure in the country.⁰

Tallahassee uses a modified council-manager form of government. It is "modified" in that not all executive functions are the responsibility of the Manager. Certain duties, such as revenue collection, investment management and pension management are the responsibility of the Treasurer-Clerk.

The remaining offices that report directly to the Commission are standard in the council-manager form and would be consistent with a municipal government structure where the charter established a "weak mayor" position.

⁰Model City Charter, Seventh Edition (Denver, Colorado: The National Civic League, 1989), p.xiii.
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In addition to the City Manager, the charter provides for the positions of City Attorney, Auditor and Treasurer-Clerk.

DUTIES and AUTHORITY

City Attorney⁰

The City Attorney's office provides legal counsel and advice to the Commission, the City Manager and all other city departments. It drafts all ordinances and represents the city in all legal matters.

The position is retained and dismissed by the City Commission. The office follows city personnel, budget and other administrative support procedures as do all departments within the city.

Total FY 1990-91 budget is \$984,165.

City Auditor

The City Auditor is responsible for providing and coordinating audit services to the City Commission. His duties include reviewing and appraising policies, procedures, accounting and financial operations of the City.

He is appointed and removed by the Commission, although he receives guidance and advice from the Audit Committee. The Audit Committee is mandated by the Charter and is appointed by the City Commission.

⁰The County Commission utilizes a similar position as that of the City Attorney. Like the City Attorney, the County Attorney is responsible for representing the County Commission and county departments under the Commission on all legal matters. Because of the independent nature of the Constitutional Officers, however, the County Attorney typically does not represent them and they retain their own counsel for that purpose.

Total budget for FY 1990-91 is \$398,055.

City Treasurer-Clerk

The Treasurer-Clerk is appointed and removed by the Commission and has duties that are prescribed by the charter and ordinance. The position functions as official record-keeper of the city and maintains transcripts of all meetings; is the custodian of all funds and manages and invests city revenues; is the collector of all city revenue; and administers the city occupational license ordinance.

The office also is responsible for pension administration, administers the city's self-insurance program and provides risk management services.

FY 1990-91 budget for the office is \$9,897,186.

POLICY ISSUES

This section of the briefing paper is intended to raise issues and describe options available for consideration by the Study Commission with regard to the duties of the Constitutional and Charter Officers.

The constitution provides that the duties of the constitutional offices may be altered as may be provided in a county charter or special act that is approved by a majority of the electors or by general law when all of the duties an office as prescribed in general law is transferred to another office.⁰

Since the subject in front of the Study Commission is a consolidation charter - as opposed to a basic county charter - one option that is essentially not available is to leave things as they are. For example, to accept the municipal structure (or a similar form) would basically say that the County system of independent officers was rejected.

Conversely, to accept a structure with independent Constitutional Officers is tantamount to rejecting the municipal system and all of the commensurate policies and options available with it.

County Practices In Florida

There are 13 charter counties in Florida.⁰ All have retained the existing Constitutional offices without change except for Dade, Broward, Duval, Volusia and Orange.⁰

⁰Article VIII, Section 1.(d), Constitution of the State of Florida.

⁰Alachua, Broward, Charlotte, Clay, Dade, Duval, Hillsborough, Orange, Palm Beach, Pinellas, Sarasota, Seminole and Volusia.

⁰Orange split the duties of the Clerk between an elected Clerk of the Court and an elected Comptroller by special act prior to becoming a charter county. This structure was retained in the

The Dade county charter has abolished all of the elected Constitutional Officers positions and transferred those duties to appointed officials. The charter retains an elected Clerk of the Court but that position has functions only relating to the judiciary.

Broward has abolished the Tax Collector and the duties of the Clerk as relates to the County Commission for finance, investments and audit. The charter calls for an Internal Auditor to be hired by the Commission. The remaining duties of the abolished Offices are transferred to a department of finance under the County Administrator.

The remaining Offices in Broward are not changed, although the charter does encourage use of centralized support systems by the Constitutional Officers.

Duval has abolished all of the Constitutional Offices and replaced them with elected Charter offices, resulting in three main changes. First, all of the Offices now subscribe to uniform budget procedures and administrative support services, such as purchasing, data processing and personnel. Secondly, the duties of the Clerk relating to finance are transferred to the Chief Administrative Officer within the Mayor's office. Lastly, since the employees of the Offices no longer work for a Constitutional Officer, they are able to participate in the collective bargaining process as contained in Chapter 447, Florida Statutes⁰.

charter. Escambia has also split the office into two elected positions.

⁰Case law in Florida has held that employees of the Sheriff, Clerk of the Court and Property Appraiser are the "alter-egos" of those officers and are not "employees" as defined in Chapter 447, FS, relating to public sector collective bargaining. Since they are not "employees" they are not able to form or join public sector labor organizations. Although never tested in court, a similar conclusion would likely be reached for employees of the Supervisor of Elections and Tax Collector.

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The Volusia County charter has abolished all of the Constitutional Offices and transferred some of those duties to appointed positions and other duties to elected charter offices.

The duties of the Clerk relating to finance and all duties of the Tax Collector are transferred to the Finance Department, which is located under the County Manager's office. The Sheriff is now an elected department head and must subscribe to the same administrative support services and procedures as any other department head. The charter locates operation of the jail under a separate department of corrections. The Property Appraiser's and Supervisor of Elections' Offices have also been altered to that of elected department heads.

Available Options

The Study Commission has the option of leaving the Constitutional Offices untouched and transferring the duties of the Treasurer-Clerk and Internal Auditor to the Clerk of the Court and Tax Collector, and the duties of the Chief of Police to the Sheriff.

There are several arguments in support of this system:

- * The Constitutional Officers' duties are mandated by state law and those duties must be carried out no matter what form of government exists in the county.
- * Maintaining complete independence of those offices insures a system of "checks and balances."
- * It permits the Offices to focus exclusively on the duties mandated by law without undue influence from the legislative body of the county.
- * The offices provide many services to other jurisdictions in addition to the county government and should therefore be independent of the county legislative body.

The Study Commission could adopt the municipal system or something with a similar structure:

- * Placing most of the functions under the duties of the Manager and separating legislative and administrative functions improves professional management of services.

- * The municipal model requires all offices to operate under uniform administrative systems such as budget, personnel, risk management, purchasing, finance, motor pool, legal, etc.
- * The entity responsible for raising taxes necessary to fund the duties as required by state law should have greater control over the policies and procedures adopted in those offices.
- * Public sector employees should have the right to bargain collectively if they so chose.

The Study Commission could adopt a system like that in Volusia, where some of the Offices duties are transferred to appointed officials and others are transferred to elected charter officers:

- * Public employees can join labor organizations, if they so desire.
- * There are uniform support services and procedures.
- * The public still selects most of the traditional county independent officers. Since those offices are still elected, they still command the ability to develop political consensus in the community independently of the Commission.
- * Final accountability for tax rates and budget policy rests with the Commission.
- * Responsibility for finance, revenue collection and investment decisions rest with the Manager's office.
- * Options for local decisions (via the charter) become available in areas such as partisan v. nonpartisan elections, length of term, limits on terms, determination of salaries and filling vacancies in office, for those positions that become elected department heads.

VII.

REMARKS OF INTERESTED CITIZENS

VIII.

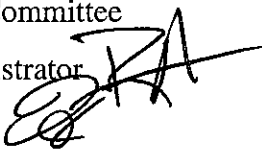
UNFINISHED BUSINESS

CITIZEN CHARTER REVIEW COMMITTEE

MEMORANDUM

DATE: December 7, 2009

TO: The Citizen Charter Review Committee

FROM: Parwez Alam, County Administrator
Herb Thiele, County Attorney 

SUBJECT: Analysis of the Citizen Charter Review Committee's Legal Scope of Board and County Commissioners Charter Issues

This memorandum provides an analysis of the charter issues that have been identified by the Leon County Board of County Commissioners and individual County Commissioners. In addition, the memorandum presents the legal scope for which each issue may be addressed by the Citizen Charter Review Committee (Committee).

Background

On May 26, 2009, the Leon County Board of County Commissioners (Board) conducted a workshop to identify policy issues that it wished to be considered by the Committee to strengthen the County Charter to better position the County to most effectively deal with current and anticipated challenges and opportunities facing our community. The Board stressed that the issues identified should not be considered exhaustive or limit the Committee's ability to address broad or specific issues.

During its November 12th and 19th meetings, the Committee received presentations from each of the County Commissioners regarding issues that they wished to be addressed during the charter review process. A number of the issues that were presented by the County Commissioners mirror issues that were identified by the Board and is addressed collectively.

Analysis

County/city consolidation and/or functional consolidation

The issues of full consolidation (County/City) and functional consolidation (department and/or services) have been debated and addressed extensively by the elected bodies of the County and City of Tallahassee. The Board determined that discussion may be warranted by the Committee to identify potential benefits and challenges to consolidation.

Earlier this year, the City's Charter Review Committee met for 120 days to review the City Charter. The City's CRC recommended that the County and City establish a formal schedule to consolidate the Growth Management departments, Parks and Recreation, Animal Control, and stormwater functions. During the individual commissioners' presentations to the Committee, a number of commissioners expressed opposition to full or functional consolidation consideration for the County Charter.

Committee's Legal Scope: The Committee's authority is limited in two areas in regard to this issue. First, full consolidation of the County and City would first require a Special

Act of the Florida Legislature in order to proceed. Article VIII, Section 3 of the Florida Constitution provides in relevant part that:

*The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed **only** by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan.)*

Second, functional consolidation would require agreement of the City of Tallahassee. Article VIII, Section 4 of the Florida Constitution provides that:

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Thus, functional consolidation could occur through a transfer of powers. However, initial approval by the City Commission would be required through a transfer of powers resolution prior to voter approval. Further, such a transfer of powers under Article VIII, Section 4 of the Florida Constitution would require a dual referendum. A dual referendum requires the approval of the majority of the County electorate and the majority of the electorate residing within the City's limit.

Another method by which functional consolidation of county and city powers could be accomplished is through a negotiated interlocal agreement of the two jurisdictions, and therefore would not, under those circumstances, require a charter amendment.

Countywide stormwater standards/environmental ordinances

The Board as well as Commissioner Jane Sauls identified countywide stormwater standards as a potential charter issue that the Committee may wish to address. Since 2000, the Board has elevated pursuing countywide stormwater regulation as a County priority during its Board Retreat process. The County Charter currently states that all municipal ordinances prevail over County ordinances to the extent of any conflict within the municipalities' boundaries. This provision limits the establishment of countywide stormwater standards.

Committee's Legal Scope: The Committee has the authority to recommend a proposed charter amendment that could establish countywide stormwater standards. Article VIII, Section 1(g) of the Florida Constitution provides in relevant part that "[t]he charter shall provide which shall prevail in the event of a conflict between county and municipal ordinances." This could be accomplished by proposing an amendment that would allow

a county stormwater regulations ordinance to prevail in the event of a conflict with a municipal ordinance.

Codification of revised Tourist Development Council Structure

In November 2008, the Board delegated the County's tourism development program to the County Administrator. Section 2.3 of the County Charter states that senior management employees, with the exception of the County Attorney's and Tourist Development Council's staffs, shall serve at the pleasure of the County Administrator. As a result, the Board identified a revision to this section of the charter to reflect the actions taken last November. Commissioner Dailey also addressed the issue of amending this section during his presentation to the Committee.

Committee's Legal Scope: A revision to this section is within the Committee's authority as it relates to the reporting structure of the County's senior management staff.

Non-partisan elections

Elections for County Commission offices and the office of the Supervisor of Elections are non-partisan. Prior to the adoption of the County Charter, elections for these offices were partisan. During the Commission presentation to the Committee, Commissioner Desloge spoke in favor of maintaining the current system of non-partisan elections for County Commission offices. Commissioner Rackleff took the opposite position, supporting the re-establishment of partisan elections for Commission seats. The Board determined that non-partisan elections may be an issue that the Committee may wish to address.

Committee's Legal Scope: The County Charter changed the previous process of partisan elections for County Commission offices and the office of the Supervisor of Elections; and likewise it is within the Committee's purview to address this issue.

Lower Charter Petition Threshold

The County Charter requires signatures of not less than 10% of the total number of qualified County electors in each of the five County districts and must total at least 10% of the total number of qualified electors Countywide, in order to establish or amend County ordinances or the County Charter by petition. The current petition threshold is considered to be one of the most stringent among charter counties.

Committee's Legal Scope: The petition threshold is set under section 4.1 of the County Charter and is within the legal scope of the Committee for amendment consideration.

Protection of Water Supply

Water supply issue was identified by the Board as well as by Commissioner Proctor during his presentation to the Committee. Water supply is not addressed in the current County Charter. Commissioner Proctor requested the Committee explore the possibility of creating a local water management district in the County Charter that would be authorized to address water issues for the County.

Committee's Legal Scope: Several aspects of water supply regulation are preempted by the State or Federal governments. The Northwest Florida Water Management District is the constitutionally designated Water Management District for Leon County and is the regulatory entity responsible for issuing consumptive use permits to withdraw water from the aquifer pursuant to Chapter 373, Part II, of the Florida Statutes, which specifically supersedes local government regulations on the subject. Further, the power to regulate public water systems are reserved to the Department of Environmental Protection under Chapter 403, Part IV, of the Florida Statutes. Note: St. John's Water Management District has even recently taken the position that water usage restrictions like odd/even sprinkling of lawns is preempted. Although, water supply regulation is preempted, the Committee may propose a charter amendment that would mandate approval of the County electorate should support of the County and/or City be required. For example, the Committee could recommend that any action by the County and/or City to authorize/effectuate the sale or transport of groundwater (aquifer, springs, etc.) in Leon County be subject to approval by local referendum.

Annexation Policy

The Board requested that the Committee examine the current annexation policy of the County.

Committee's Legal Scope: Article VIII, Section 2(c) of the Florida Constitution governing annexation provides that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law." Chapter 171, Florida Statutes (2009) governs municipal annexation. Section 171.0413, Florida Statutes (2009) provides one method by which municipal annexation may occur, and requires the municipality to adopt an ordinance proposing to annex an area of the unincorporated territory of the county. The ordinance is then submitted to a vote of the registered electors of the area proposed to be annexed. The municipality may also choose to submit the ordinance to a separate vote of the registered electors of the annexing municipality by way of referendum. Annexation may also occur through a voluntary petition process whereby the owners of real property in the unincorporated area which is contiguous to the municipality petition the city commission for annexation. The city commission may adopt an ordinance granting voluntary annexation. However, the method of annexation provided for in Section 171.044, Florida Statutes (2009) shall not apply to municipalities in counties with charters which provide for an exclusive method of annexation.

Thus, pursuant to Section 171.044, Florida Statutes (2009), it would be appropriate for the Charter Review Committee to explore a charter amendment that governs the manner by which voluntary municipal annexations occur.

Under the Intergovernmental Coordination element of the Tallahassee-Leon County Comprehensive Plan, the city and county have adopted an annexation policy which provides for the county's input into the annexation process.

Charter officers/Constitutional Officers

Article III of the Leon County Charter preserves the functions and responsibilities of the offices of the Sheriff, Property Appraiser, Tax Collector, Clerk of Court, and Supervisor of Elections. In several charter counties the functions of constitutional officers have either been modified or abolished and their statutory responsibilities provided by the county government. The Board determined that the Committee may wish to explore any potential efficiency that may be realized through modification of the constitutional offices.

Committee's Legal Scope: Article VIII, Section 1(d) of the Florida Constitution provides that the offices of Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court are county officers. The Florida Constitution further provides charter counties the ability to amend or abolish the offices of county officers. However, in such circumstance it is required that the statutorily mandated functions of the county offices be alternatively provided by the county.

Commission Structure/Districting Schemes

Section 2.2 of the County Charter outlines the composition of the County Commission. The Board is to be composed of seven members that serve staggered four year terms. Each of the five County Commission districts is represented by one commissioner and elected within their respective district. Two members of the Commission are elected countywide. The composition and district frame of the County Commission reflects the scheme which was in place prior to the adoption of the charter.

Committee's Legal Scope: The governing law in Florida regarding the composition of county commissioners and redistricting of commissioners' districts following a census is found under Article VIII, Section 1(e), of the Florida Constitution, and Chapter 124, Florida Statutes. Article VIII, Section 1(e) of the Florida Constitution states that:

Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Section 124.01(3), Florida Statutes, provides that the Board of County Commissioners shall fix the boundaries of the districts so as to keep them as nearly equal in proportion to population as possible. Further, any changes to the boundaries to the districts can be made only in odd-numbered years. As indicated previously, Leon County must also comply with the Federal District Court's order in the *NAACP, et al. v. Leon County, Florida*, Voters' Rights Act case from 1986. The Federal District Court retained jurisdiction in the case, and therefore must approve any redistricting scheme. Lastly, the plaintiffs' in the underlying case and the Justice Department would also have standing to comment on, agree with or oppose any redistricting scheme proposed by charter amendment.

Chairman of the Board of County Commissioners

Currently, the Board elects a commissioner to serve as the chairman for a one-year term each November. At that same time the Board also elects a vice-chair for a one-year term. Commonly, the vice-chair elevates to the chairmanship the following year. During his presentation to Committee, Commissioner Desloge spoke in favor of the expansion of the current term of the chairmanship.

Committee's Legal Scope: Although the position of chairman is not currently identified in the County Charter, it is within the Committee's purview to address changes to the current leadership structure of the Board of County Commissioners. Such policy may address the length of term that a Chair is selected by his or her peers. However, it is more likely that a charter amendment may address the election of a Chair by the electorate of the county and powers related thereto.

Campaign Finance Reform

Commissioner Thael identified the single issue of campaign finance reform for review by the Committee. A cited a section of the Sarasota County Charter which provides a \$200 limit on individual contributions for local elections.

Committee's Legal Scope: Pursuant to the detailed, comprehensive and pervasive regulations set forth in the ten chapters of Florida law constituting the Florida Election Code, including Chapter 106 on campaign financing, regulating campaign contribution limits are impliedly preempted by the State of Florida. The County Attorney has attached a memo dated November 30, 2009, regarding Campaign Finance Reform / State Election Code Preemption (Attachment #1).

Intellectual property

During his presentation to the Committee, Commissioner Proctor requested that the Committee explore the inclusion of an intellectual property component to the County Charter for invention and/or technology created by County staff.

Committee's Legal Scope: Leon County utilizes the provisions of the United States Code relating to trademarks and copyrights to protect its intellectual property. Trademarks are governed by the provisions of 15 U.S.C. Chapter 22, and copyrights are regulated under the provisions of Title 17 of the United States Code. For example, the County presently has a trademark on the blue and gold County logo, and has copyrights on the Tallahassee-Leon County Addressing Data, the Tallahassee-Leon County GIS Mobile Viewer, and the DVD entitled "Preparing for the Storm." It is within the Committee's legal scope to propose an amendment that would codify the County's current practice of protecting its intellectual properties.

Petroleum Commission

Commissioner Proctor asked the Committee to discuss the establishment of a petroleum commission to study the impact of oil drilling on the Big Bend region.

Committee's Legal Scope: The regulatory powers related to the drilling and production of oil, gas and other petroleum products are reserved to the Department of Environmental Protection under Chapter 377, Part I, Florida Statutes. However, this does not prohibit the Committee from proposing a charter amendment to establish a petroleum commission to study the impact of oil drilling on Leon County and the Big Bend area.

One house per ten acres

Commissioner Proctor asked that the Committee evaluate the current density requirement of one house per ten acres in the Future Rural Land Use Map category of the Tallahassee-Leon County Comprehensive Plan.

Committee's Legal Scope: Policy 2.2.1 of the Land Use Element of the Tallahassee-Leon County Comprehensive Plan provides that property located in the Future Rural Land Use category is permitted to develop at a maximum density of one residential unit per ten acres. The Committee may propose a charter amendment addressing changes to the current maximum density requirement; however, implementation of any amendment to the Charter affecting a provision in the Comprehensive Plan would require that the Board of County Commissioners adopt a corresponding amendment to the Comprehensive Plan. To become effective, Comprehensive Plan amendments must be reviewed by the Florida Department of Community Affairs and determined to be consistent with Chapter 163 of the Florida Statutes, Chapter 9-J5 of the Florida Administrative Code, and the Tallahassee-Leon County Comprehensive Plan.

Affordable housing

Affordable housing is not addressed in the County Charter; however, Commissioner Proctor requested that the Committee consider the inclusion such a provision that would speak to the need for affordable housing in Leon County.

Committee's Legal Scope: Affordable housing programs and strategies are set forth in Chapter 420, Florida Statutes, as well as in Chapter 8, Article V, of the Code of Laws of Leon County. However, the Committee has the authority to recommend a charter provision addressing the need for affordable housing in Leon County.

Southside projects and sewer infrastructure

Commissioner Proctor asked that the Committee look at the assignment of environmental projects throughout the County. He cited a number of projects that have been identified to be located solely on the Southside of Leon County. In addition, Commissioner Proctor requested that the Committee examine the need of sewer infrastructure on the Southside.

Committee's Legal Scope: The County has granted exclusive water and sewer franchises in the unincorporated areas to the City of Tallahassee and to Talquin Electric Cooperative pursuant to Sections 18-43 and 18-44 of the Leon County Code of Laws. The procedures for transferring water and sewer franchise areas are provided under Section 18-45 of the Leon County Code of Laws. The Committee could propose an amendment that would mandate that the County provide sewer infrastructure on the Southside; however, such a provision would have a significant fiscal impact to the County.

Citizen Utility Review Advisory Board

Commissioners Akinyemi and Proctor requested that the Committee consider the establishment of a utility board in the County Charter. The utility providers in Leon County are the City of Tallahassee and Talquin Electric Cooperative. Residents of the City and approximately 50% of the unincorporated residents receive utility service through the City. The remaining population of the County utilizes Talquin.

Committee's Legal Scope: While the Committee may propose the establishment of a utility board, as a charter amendment, its regulatory authority would not extend to the City's utilities program or Talquin.


Attachment:

1. The County Attorney's November 30, 2009 Memorandum Regarding Campaign Finance Reform/State Code Preemption

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

To: Members of the Citizen Charter Review Committee

From: Herbert W.A. Thiele, Esq. 
County Attorney's Office

Date: November 30, 2009

Subject: Campaign Finance Reform / State Election Code Preemption

Pursuant to the direction provided to our office at the November 12, 2009 meeting of the members of the Citizen Charter Review Committee, this memorandum will outline the State's implied preemption of regulations concerning local campaign finance reform.

Article VI, Section 1 of the Florida Constitution, which is entitled "Regulation of elections," provides that "Registration and elections shall... be regulated by law." This law is set forth by the Florida Legislature in Chapters 97 through 106, Florida Statutes, and is known as "The Florida Election Code." Section 97.011, Florida Statutes (2009). The intent of the Election Code is to "[o]btain and maintain uniformity in the interpretation and implementation of the election laws." Section 97.012(1), Florida Statutes (2009).

Chapter 106 of the Election Code is entitled "Campaign Financing," and Section 106.08 of same sets forth a limit on the dollar amount of contributions allowable in a campaign for elected office. For example, Section 106.08(1)(a), Florida Statutes, provides that:

Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates.

Pursuant to Article VIII, Section 1(g), Florida Constitution, "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors."

The issue of setting limits to political contributions has been addressed by the United States Supreme Court. For example, in the case of Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976), the U.S. Supreme Court held that provisions of the Federal Election Campaign Act of 1971, as amended, which limited political contributions to candidates for federal elective office, were constitutional despite First Amendment objections. The Court wrote that contribution limits were permissible as long as the state demonstrated a "sufficiently important interest," such as preventing corruption and the appearance of corruption, and employed a "means closely drawn to avoid unnecessary abridgment of associational freedoms." 424 U.S. at 25. Several

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years later, in the case of Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 120 S.Ct. 897 (2000), the U.S. Supreme Court found that its decision in Buckley v. Valeo was also the authority for a state to set limits on campaign contributions. Since Buckley, the U.S. Supreme Court has consistently upheld contribution limits in other state statutes. Randall v. Sorrell, 548 U.S. 230, 247, 126 S.Ct. 2479 (2006).

However, in a recent case, Randall v. Sorrell, 548 U.S. 230, 126 S.Ct. 2479 (2006), the U.S. Supreme Court found that a Vermont statute set campaign contribution limits "too low," and thus violated the First Amendment's free speech protections. Specifically, the Vermont statute limited the amount an individual, political party, and political committee could contribute to a campaign for governor at \$400, state senator at \$300, and state representative at \$200, per election cycle. These limits were "substantially lower" than the limits previously upheld by the Supreme Court and comparable limits in other states. 548 U.S. at 253. The Court noted that "we must recognize the existence of some lower bound" and that "contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." 548 U.S. at 248-249.

As to the issue of state preemption in the field, there is a recent court case in Florida that addresses the preemption of the Election Code over local government regulations. In Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So. 2d 637 (Fla. 2d DCA 2007), the Second District Court of Appeal reversed the holding of the trial court and found that proposed amendments to Sarasota County's charter were impliedly preempted by the Election Code. The charter amendments, which were proposed by a political action committee, required paper ballots, mandatory audits of the voting system, and certification of elections after the mandatory audit was completed. The Court explained that preemption is implied "when the 'legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.'" 968 So. 2d at 645. (Citations omitted.)

In determining whether or not the Election Code preempted the proposed Sarasota County charter amendments, the Second District Court of Appeal noted that the Election Code's ten chapters of regulations established a "detailed and comprehensive statutory scheme for the regulation of elections in Florida, thereby evidencing the legislature's intent to preempt the field of elections law, except in those limited circumstances where the legislative has granted specific authority to local governments." 968 So. 2d at 646. The Court goes on to state, "[t]his pervasive state control of the election process is a compelling indicator that the legislature did not intend for local governments to enact their own individual election laws," and the "legislature has enacted the Election Code with such detailed depth and breadth that its intent to occupy the entire field is forcefully implied." 968 So. 2d at 647. One of the cases that is cited by the Court is a Maryland case styled County Council for Montgomery County v. Montgomery Association, Inc., 333 A.2d 596 (Md. 1975), which held that the state's election code completely occupied the field of regulation of campaign finances, to the exclusion of any local legislation on the subject.

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Therefore, Montgomery County's limits on campaign contributions were found to be invalid. The Second District Court of Appeal also certified a question to the Florida Supreme Court on the matter of the state's preemption in the field of elections law, but there has been no further activity in the case.

In addition, Florida Attorney General Opinion 074-263, rendered in 1974, determined that Chapter 106, Florida Statutes applied to candidates for elective municipal office and that the regulation of campaign contributions was preempted to the state.

It has been pointed out that there are local regulations in Florida that provide for campaign finance reforms, including campaign contribution limits. For example, the Alachua County Charter provides for a \$250 limit on campaign contributions. However, it should be noted that the Alachua County regulations were authorized by a special law enacted by the Florida Legislature and were approved by a majority vote of the electors in a general election held November 2, 2004. As these regulations were enacted pursuant to special law of the Florida Legislature, these regulations are not preempted by the Election Code.

In addition, Sarasota County's charter sets campaign contribution limits of \$200.00 per contributor. In 1999, the campaign contribution limits and other related issues were the subject of a lawsuit in the Twelfth Judicial Circuit styled Ciaravella v. Board of County Commissioners of Sarasota County, Florida, Case No. 99-4201-CA, in which the Circuit Judge for the Twelfth Circuit held that the campaign contribution limits were constitutional and enforceable. This holding was not appealed. However, a holding in the Twelfth Judicial Circuit would not be binding or authoritative in the Second Judicial Circuit in and for Leon County. Furthermore, in light of the Second District Court of Appeal's more recent holding in Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So. 2d 637 (Fla. 2d DCA 2007), which found that the Election Code did impliedly preempt local regulations in the field of elections, Sarasota County's campaign contribution limits would also likely be found impliedly preempted by the State.

In conclusion, pursuant to the detailed, comprehensive and pervasive regulations set forth in the ten chapters of Florida law constituting the Florida Election Code, including Chapter 106 on campaign financing, it is the opinion of the County Attorney's Office that campaign contribution limits are impliedly preempted by the State of Florida.

HWAT/PTK/plp

IX.

NEW BUSINESS

IX. (1): Charter Issues

- Tourist Development Council Structure**
- Non-Partisan Elections**
- Annexation Policy**



MEMORANDUM

TO: Leon County Charter Review Committee
FROM: Kurt Spitzer
DATE: December 8, 2009
RE: Information for Meeting of December 10, 2009

This is to provide you with backup information for your meeting of December 10, 2009. There are three subjects that you have identified for discussion during that meeting: Non-partisan elections; annexation; and, the structure of the Tourist Development Council within the charter.

1. Non-partisan Elections

The charter provides that the members of the Board of County Commissioners and the Supervisor of Elections are elected on a non-partisan basis, without regard to party affiliation. The other county constitutional officers remain elected on a partisan basis.

Most charter counties have retained the partisan system of elections for County Commissioners that is prescribed for Commissioners in non-charter counties. Retaining a partisan system of elections offers the following advantages:

- ❖ Requiring candidates to run on the basis of party affiliation helps to identify the candidate's political traits and characteristics.
- ❖ The role and influence of the local political party tends to be more pronounced in elections that are partisan in nature.

Several county charters provide for non-partisan elections of the County Commission and, in some cases, the Constitutional Officers. Providing for a system of non-partisan elections offers the following advantages:

- ❖ Party affiliation is a less important and relevant indicator of future “job performance” in contests for local office than it is for state or federal office.
- ❖ Electing Commissioners on a non-partisan basis lessens the role and influence of the local political parties.
- ❖ All municipal and school board elections are held on a non-partisan basis.
- ❖ When qualifying for office by payment of filing fees, the fees in non-partisan elections are somewhat lower than those for partisan contests.

In addition to Leon, county charters providing for non-partisan elections are:

- ❖ Columbia (all county officials)
- ❖ Duval
- ❖ Miami-Dade
- ❖ Orange (all county officials)
- ❖ Palm Beach (county constitutional officers)
- ❖ Polk (county constitutional officers)
- ❖ Volusia (all county officials)

The charter may be amended in a number of ways to expand or contract the application of partisan elections for Leon county offices. Generally, the options available to the Committee are as follows:

1. Retain the current system without change.
2. Expand the current practice to all county officers.
3. Return to partisan elections for the members of the County Commission and/or the Supervisor of Elections.
4. Retain the system of non-partisan elections but require identification of party affiliation on the ballot for each candidate. Under this system, all candidates appear on a single ballot and a Republican elector may vote for a Democratic candidate (and vice versa) in an election. However, the party affiliation of each candidate appears on the ballot so as to better inform the voter.

2. Annexation

“Involuntary” or “voted” annexation is pre-empted by general law and a charter may not alter policy in this area. However, the charter may be amended to prescribe policy and procedures in the case of “voluntary” annexations – those situations where landowners agree to be annexed by the city.

Annexation is typically an issue of concern in larger, more urban counties where there is a multiplicity of city governments and strong competition for areas to provide municipal services such as water/sewer. Such competition may be between two or more cities, or between the county and one or more cities.

While a specific problem has not been identified for the consideration of the Committee, examples of possible policies that could be considered for inclusion in this policy area are measures to enhance requirements for notice and consent of either all of the landowners and/or the County Commission. Such provisions could be made applicable to all voluntary annexations or only those which exist outside of the urban services area.

A narrative example of policy on voluntary annexations from Palm Beach County is attached for your review.

3. Tourist Development Council Structure

The Leon County charter provides, as do most other county charters, that there are two charter officers that are hired and fired by the Board of County Commissioners: The County Administrator and the County Attorney. Senior staff reporting to either of those positions may be disciplined or terminated by the Administrator or Attorney with or without cause.

However, the Leon charter provides for an exception for the staff of the Tourist Development Council. But the Board of County Commissioners has delegated the supervision of the tourism development program to the County Administrator, creating a potential conflict between what the charter says and actual practice.

This is a largely housekeeping or technical issue. The Committee could recommend that an amendment be adopted to remove the exception for the staff of the Tourist Development Council from the charter. Such an amendment would bring the charter in line with current practice in Leon County and make the policy in the Leon charter consistent with that in other county charters.



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Annexation Frequently Asked Questions

What types of annexations are affected by the County's Exclusive Method of Annexation?

Only voluntary annexations are affected by the charter amendment and implementing ordinance. The requirements for other types of annexations, such as enclave interlocal annexations and referendum annexations, remain the same as Chapter 171, F.S.

How does the County's Exclusive Method of Annexation vary from State Statutes?

The Implementing Ordinance directs that Voluntary Annexations are subject to Ch. 171.044, F.S., but require additional notification for all annexations. Annexations in the rural areas of the County also require Board of County Commissioner consent, and in rural residential neighborhoods, resident approval is also required.

What are the notification requirements for Voluntary Annexations?

- All Voluntary Annexations within Palm Beach County are bound by the notification requirements in the Implementing Ordinance.
 - The County's Implementing Ordinance requires that within ten calendar days of receipt of a voluntary annexation petition that bears the signatures of all owners of property in the area proposed to be annexed, the annexing municipality shall submit a copy of the said petition to the County Administrator and the County Planning Director.
- Chapter 171.044(6) states that "Not fewer than 10 days prior to publishing or posting the ordinance notice required under subsection (2), the governing body of the municipality must provide a copy of the notice, via certified mail, to the board of the county commissioners of the county wherein the municipality is located." The County's Implementing Ordinance is consistent with the Statute deadlines, but specifies that the notification shall be sent to the County Administrator and the County Planning Director.
- Chapter 171.044(6) states that the notice provision may be the basis for a cause of action invalidating the annexation. The County's Implementing Ordinance also specifies that failure to comply with the notice provisions may be the basis for a cause of action invalidating the voluntary annexation.

What types of Voluntary Annexations require Board of County Commissioners consent?

- Voluntary annexations in the rural areas of the County require Board of County Commissioner approval prior to adoption. Only voluntary annexations within the Unincorporated Protection Area, the unincorporated lands outside of the County's Urban Service Area Boundary, require consent by the Board of County Commissioners prior to annexation.

Where is the Unincorporated Protection Area?

- The boundaries of the Unincorporated Projection Area are adopted as part of the Implementing Ordinance, and consist of the unincorporated area outside the County's Urban Service Area Boundary.

Which municipalities are adjacent to the Unincorporated Protection Area?

- At the time of the adoption of the Implementing Ordinance, nearly 80% of the municipalities in Palm Beach County are not contiguous to the Unincorporated Protection Area. Voluntary annexations by these municipalities would not likely be within the Unincorporated Protection Area, and consequently, would not require approval by the Board of County Commissioner prior to adoption.
- The following municipalities are adjacent to the Unincorporated Protection Area, and are more likely to be affected should they pursue annexations within the Unincorporated Protection Area:

- | | |
|----------------------|---------------|
| • Jupiter | • Wellington |
| • Palm Beach Gardens | • South Bay |
| • West Palm Beach | • Pahokee |
| • Royal Palm Beach | • Belle Glade |
| • Loxahatchee Groves | |

What types of Voluntary Annexations require the consent of the surrounding neighborhood(s) in addition to Board of County Commissioners consent?

- Voluntary annexations in designated rural neighborhoods within the Unincorporated Protection Area of the County require neighborhood consent in addition to Board of County Commissioner approval prior to adoption. Only voluntary annexations within Unincorporated Rural Neighborhoods within the Unincorporated Protection Area require a vote of the electors of the entire neighborhood in addition to the consent of the Board of County Commissioners, prior to the annexation.

What are the designated Unincorporated Rural Neighborhoods?

- The boundaries of the Unincorporated Rural Neighborhoods are adopted as part of the Implementing Ordinance, and include rural neighborhoods with at least 25 dwelling units as of January 1, 2005. The following communities are designated Unincorporated Rural Neighborhoods in the Implementing Ordinance and on the associated map:
- | | |
|------------------------------|-----------------|
| • Palm Beach Country Estates | • Entrada Acres |
| • Caloosa | • Mandell |

- Jupiter Farms
- Stonewal Estates (AKA- Bayhill Estates)
- The Acreage
- Kramer's U/R (AKA – Rustic Lakes)
- Deer Run
- Deer Run Plat 2
- Sunny Urban Meadows
- Fox Trail
- Las Flores Ranchos
- Santa Rosa Groves
- Tall Pine Acres U/R
- Waite Sub U/R
- Canal Pine Acres
- Dellwood Estates
- White Fence Estates
- Homeland
- Indian Lakes Estates
- Oak Wood Lands

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IX. (2): Staff/Consultant Discussion

IX. (3): Member Discussion

X.

**ADJOURNMENT WITH DAY FIXED FOR
NEXT MEETING**